

051054 2005

No. _____

OFFICE OF THE CLERK

**IN THE
SUPREME COURT OF THE UNITED
STATES**

**TERENCE CULPEPPER
PETITIONER**

- vs. -

**MARYJEAN CULPEPPER, et al
D.C. of NJ Civil Nos. 02-cv-02926 & 02-cv-
03902**

RESPONDENTS

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR
THE THIRD CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Did the Court err by dismissing my appeal ? Does the panel decision to dismiss my appeal conform with the Constitution of the United States of America and the Federal Rules of Appellate Procedure, specifically Rule 25?

The Defendants mailed "**letters**" to the Appellate Court which were "**deemed**" to be "**motions**" by the Appellate Court.. If the "**deemed motions**" did not comply with Rule 25. Did the Court err in deeming the "**letters**" sent by the Defendants to be "**motions**"? Did the courts actions deny my right to "due process"?

The Third Circuit made my appeal contingent upon the disposition of the appeal of my criminal conviction before the Superior Court Appellate Division. Although the appeal of my criminal conviction before the Superior Court Appellate Division was dismissed. The dismissal of the appeal before the Superior Court Appellate Division was temporary in nature and was not due to any oversight on my part. The appeal of my criminal conviction before the Superior Court Appellate Division was reinstated. The Third Circuit was notified prior to their order dismissing my appeal before them, that the appeal of my criminal conviction before the Superior Court Appellate Division had been reinstated.

Did the Third Circuit err in refusing to reinstate my said appeal?

PARTIES TO THE PROCEEDING

Chief James O'Connor
Officer Robert Hammerle
Officer Mark Piercy
Officer Frank Fiori
Officer Brian Coglin
John Conte Jr.
Borough of Oakland
Borough of Oakland Police Department
Judge Marguerite Simon
Judge Bruce Gaeta
Rem Law Group
Joseph Rem
Robert Zeller
Theresa Doyle
ERA Burgdorf Realtors
Mary Ellen Flannery
Randolph Wine
Peter Jeffer
Mary Jean Culpepper
Bergen County
Frank Risse
Catherine Risse

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JURISDICTION

The United States Court of Appeals has entered a decision, which is in conflict with Constitution of the United States of America, and has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the court's supervisory power.

The United States Court of Appeals has decided an important question of federal law that conflicts with relevant decisions of this court.

The date of the decision was September 8, 2005.

STATEMENT OF THE CASE

The matter before this court involves two separate complaints, which arose out of two separate causes of action. Early in the case, the Federal District Court in Newark on it's own initiative consolidated the two complaints D.C. of NJ Civil Nos. 02-cv-02926 & 02 cv-03902. The original complaints are connected by events that transpired, after the death of my father Hugh Stephen Culpepper. The District Court then dismissed the resulting consolidated complaint, by way of summary judgment.

I appealed the dismissal order of the consolidated complaint to the Third Circuit Court of Appeals. In turn, that Court granted the motion staying the appeal in question, pending the disposition of my appeal of my criminal conviction before the New Jersey Superior Court Appellate Division.(Exhibit I)

The original law suit charges the defendants with malicious prosecution among other charges, which linked it to my criminal conviction's appeal.

Because of my criminal appeal's lawyer's failure to timely file a brief with New Jersey Superior Court of Appeals, the court then dismissed the case. At that point, my lawyer Leslie Sinemus immediately remedied this oversight by filing a motion to reinstate, which was granted. (Exhibit G)

By then, the Third Circuit then dismissed the civil suit's appeal before them, based on "**letters**" from the Defendants, which were deemed "**motions**". These "**motions or letters**" from the defendants stated that the appeal of my criminal conviction had been dismissed. A request which was premature, because my criminal conviction appeal's dismissal before New Jersey Superior Court Appellate

Division, was due to an oversight on the part of my criminal defense lawyer Leslie Sinemus and that appeal was again reinstated as stated above. (Exhibit G)

The Third Circuit was informed of these developments as part of their order granting me an Extension to File Appeal. They were informed, as per their previous instructions to file a report on the status of my criminal appeal before the New Jersey Superior Court Appellate Division, every 45 days with the Third Circuit (Exhibit I).

Once The Third circuit was notified that the criminal appeal before the New Jersey Superior Court Appellate Division had been reinstated, before their final dismissal order, the Third Circuit then refused to reinstate the case to its previous status.

I also filed an affidavit addressing the dismissal of the appeal of my criminal conviction, which was filed with the Third Circuit (Exhibit A). My criminal defense lawyer Leslie Sinemus also filed a certification with regard to the matter (Exhibit B).

Reasons for Granting Petition

On December 30, 2004 my motion for a stay of my appeal and granting an extension to file my appeal before the Third Circuit Court of Appeals was granted. The order directed me to file with the clerk's office, a written status report within 45 days of the order and every 45 days thereafter, until the Superior Court Appellate Division proceedings have been concluded.

Subsequently and unbeknownst to me, I found out that my criminal appeal before the Superior Court had been dismissed. On March 15th 2005, I filed an affidavit to the Third Circuit which states in relevant part (Exhibit A):

"Additionally, and to my serious distress and dismay. I learned that because Mrs. Sinemus has been ill. She had not timely filed the brief to pursue my criminal appeal in the Superior Court, and it had been dismissed. This was through no fault of my own and I did not know before last week that the appeal had been dismissed."

"Mrs. Sinemus has returned to work full time, having received and continuing to receive treatment for her condition, and she has assured me that she is immediately moving to reinstate my appeal and move my case forward. See certification of Mrs. Sinemus. Attached hereto."

"I respectfully request that this Court continue the stay, Despite the temporary status of the appeal as dismissed, Based upon Mrs. Sinemus's representations that she is immediately moving to have

the appeal reinstated, and based upon the that the temporary status as dismissed is due to her illness, and not due to any fault or lack of effort on my part. We will of course, report to the court as to all developments in the Superior Court case, as they occur or as this court directs."

The concept of judicial review has been a linchpin of American law for more than 200 years now. The panel denied my appeal based on "**letters**" sent to the court by the defendants which were "**deemed motions**" by the panel. These deemed motions, had they been such, they were never properly served on me by the defendants per rule 25.

I was not made aware, nor informed that the letters which the panel "deemed motions" had been reclassified as such by the panel until I received an order from the panel denying my appeal.

deem, To treat something as if (1) it were really something else, or (2) has qualities that it doesn't have. 2. To consider, think or judge.
"Black's Law Dictionary 7th abridged"

Did the Court err in deeming those letters from the Defendants to be motions? Are the actions of the Third Circuit a deprivation of my right to Due Process with respect to the Fourteenth Amendment of Constitution of the United States of America in general, and the Fifth Amendment of the United States of America in particular?

Did the Court err in not applying the Federal Rules of

Appellate Procedure Rule 25 to the Defendant's "deemed motions" in that the failure of the defendants in this matter to properly serve their deemed motions on me in accordance with Rule 25?

The defendant's premise that my appeal before the New Jersey Superior Court has been dismissed is no longer true and was not true at the time the Third Circuit Court of Appeals signed the order dismissing my appeal. **The appeal before the New Jersey Superior Court Appellate Division had been reinstated (Exhibit G).**

I sent a copy of the affidavit filed with the Third Circuit to the defendants involved in this matter. Rather than wait for the decision from the Superior Court Appellate Division on the matter, the defendant's immediately sent letters to the Third Circuit demanding that my appeal before Third Circuit be dismissed.

I then sent a copy of the letter from the New Jersey Attorney General's office dated July 18th 2004 to the Third Circuit which directed the Bergen County Prosecutor's office to file a brief in the matter. That letter was sent in compliance with the Third Circuit's order dated August 10th 2004 which directed me to file a report every 45 days with regard to the status of the appeal of my criminal conviction before the New Jersey Superior Court Appellate Division

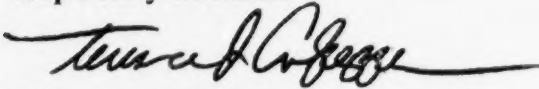
I sent a copy of the order from the New Jersey Superior Court Appellate Division dated June 13th 2004 to the Third Circuit Court of appeals.

CONCLUSION

Based upon the foregoing analysis, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

The Writ of Certiorari should be granted.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Terence J. Culpepper", with a long horizontal flourish extending to the right.

S/Terence J. Culpepper